

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: STRYKER REJUVENATE AND
ABG II HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL No. 13-2441 (DWF/FLN)

This Document Relates to All Actions

PRETRIAL ORDER NO. 19

**ORDER REGARDING
BELLWETHER CATEGORIES**

Based upon the proposals and presentations of the parties, and the Court having reviewed the contents of the file in this matter, and being otherwise duly advised in the premises, the Court hereby enters the following Order Regarding Bellwether Categories:

1. Except to the extent modified herein, all existing pretrial orders of this Court shall remain in full force and effect.
2. The bellwether case pool is defined as all MDL cases involving plaintiffs who were implanted with a Rejuvenate or ABG II Modular hip implant, and subsequently underwent a revision procedure during which the neck and stem components were removed, who filed directly in this MDL, or transferred to this MDL, on or before April 28, 2014, and for which properly completed Plaintiff Fact Sheets, medical records and authorizations were provided to Defendants by 5:00 p.m. C.D.T. on May 1, 2014.
3. The bellwether case pool is divided into five categories depending on the product, the date of implant surgery, and the post-revision outcome as more fully described below. The order in which the categories appear is insignificant, and in no way

reflects an agreement by the parties on the order in which bellwether trials should be conducted. (See Paragraph #6, below) The categories are:

A. Category One – Plaintiffs implanted with a Rejuvenate Modular hip implant prior to January 1, 2011, who subsequently underwent an “Uncomplicated Revision.” (See “Uncomplicated Revision” below.)

B. Category Two – Plaintiffs implanted with a Rejuvenate Modular hip implant prior to January 1, 2011, who subsequently underwent a “Complicated Revision.” (See “Complicated Revision” below.)

C. Category Three – Plaintiffs implanted with a Rejuvenate Modular hip implant on or after January 1, 2011, who subsequently underwent an “Uncomplicated Revision.” (See “Uncomplicated Revision” below.)

D. Category Four – Plaintiffs implanted with a Rejuvenate Modular hip implant on or after January 1, 2011, who subsequently underwent a “Complicated Revision.” (See “Complicated Revision” below.)

E. Category Five – Plaintiffs implanted with an ABG II Modular hip implant, who subsequently underwent a revision procedure during which the neck and stem components of the ABG II Modular device were removed. This category includes both “Complicated” and “Uncomplicated” ABG II cases.

4. An “Uncomplicated Revision” is defined as a surgery during which the stem and neck components of the implanted Rejuvenate device were removed from the plaintiff and that plaintiff experienced no significant intra-operative or post-operative complications.

A “Complicated Revision” is defined as a surgery during which the stem and neck components of the implanted Rejuvenate device were removed from the plaintiff and that plaintiff experienced significant intra-operative and/or post-operative complications causing unanticipated and extraordinary damages. “Complicated” revision surgeries may include, by way of example but not limitation: significant osteotomy, fractured femur, orthopedic cable cerclage, infection, and/or additional surgeries after the revision surgery.

The definitions of “Uncomplicated” and “Complicated” Revision strictly apply to the selection of future bellwether pools and have no bearing on future aspects of this litigation. The parties are hereby ordered to use best efforts to agree on the appropriate category into which each plaintiff should be placed. Any unresolved disputes will be timely resolved by the Court.

5. Three lead cases from each of the five bellwether categories shall be selected for discovery and trial as follows: Counsel shall confer and attempt to agree upon three cases that should be designated as lead cases in each of the five categories. To qualify for such designation, a case should be reasonably representative of the other cases in the category. If counsel are not able to agree upon which cases in each category should be designated as lead cases, counsel shall file with the Court on or before July 21, 2014, the names of the three cases each contends should be the lead cases in each category with a brief description (not to exceed 300 words per case) why each case should be so designated. Counsel may file with the Court on or before July 28, 2014, a letter not exceeding three pages explaining why one or more of the cases designated by the opposing side should not be a lead case. Thereafter, the Court will set this matter for

a telephonic hearing on a date to be selected by the Court, if available, after August 5, 2014 and before the regularly scheduled status conference for the month of August. It is the intention of the Court to issue an Order that identifies three lead cases in each of the five bellwether categories prior to the August status conference.

6. The parties are in agreement that the first bellwether trial should be selected from Category #1 (uncomplicated revision of Rejuvenate implanted before January 1, 2011). The order of the remaining bellwether trials was decided by the Court based upon all of the files, records and proceedings herein, including the oral argument had on the telephone on May 22, 2014.

7. The second bellwether trial will be selected from Category # 2 (complicated revision of Rejuvenate implanted before January 1, 2011).

8. The third bellwether trial will be selected from Category # 3 (uncomplicated revision of Rejuvenate implanted after January 1, 2011).

9. The fourth bellwether trial will be selected from Category # 4 (complicated revision of Rejuvenate implanted after January 1, 2011).

10. The fifth bellwether trial will be selected from Category # 5 (revision of ABG II implant).

Dated: May 22, 2014

s/Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Dated: May 28, 2014

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge